

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 18, 2025

**CASE:** 2024-00438N

**Citation:** Seif v. Toronto Standard Condominium Corporation No. 1511, 2025 ONCAT 48

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Patricia McQuaid, Vice-Chair

**The Applicant,**

Sara Seif

Self-Represented

**The Respondent,**

Toronto Standard Condominium Corporation No. 1511

Represented by Natalia Polis, Counsel

**Hearing:** Written Online Hearing – December 17, 2024 to March 5, 2025

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Sara Seif (the “Applicant”) is a unit owner of Toronto Standard Condominium Corporation No. 1511 (“TSCC 1511”). Ms. Seif lives on the first floor of the building. She alleges that the exit door, which is opposite and about three feet from the entrance door to her unit, when used by other residents and security staff, creates unreasonable noise which is a nuisance in violation of s. 117 (2) of the *Condominium Act, 1998* (the “Act”) and significantly impacts the quality of her life. The Applicant seeks an order from the Tribunal directing TSCC 1511 to take “immediate and effective measures to resolve the issue of the door slamming”. She is also requesting costs including reimbursement of her Tribunal fees.

[2] TSCC 1511 asserts that the use of the door does not create an unreasonable noise and that it has fulfilled its obligations under the Act in relation to the Applicant’s complaints. TSCC 1511, in submissions to which the Applicant had an opportunity to respond, asserted that the Tribunal does not have jurisdiction to decide this case because the Applicant, in her evidence and submissions, appears to allege that this is, in effect, a repair and maintenance issue.

- [3] The Tribunal has determined in previous cases that the fact that an applicant requests a repair as a remedy does not automatically remove a case from the Tribunal's jurisdiction.<sup>1</sup> I have therefore considered the evidence on the noise dispute and have made this decision on the basis of whether there is a violation of s. 117 (2) of the Act. I will, however, address the TSCC 1511's submissions regarding the issue of repair and maintenance as it is an issue interwoven through the Applicant's evidence.
- [4] In her evidence and submissions, the Applicant also alleged that TSCC 1511 has been negligent in that it has allowed substandard practices; specifically, by engaging incompetent contractors to do repair work. Whether or not that is true, questions of negligence and TSCC 1511's choice of contractors are not matters which the Tribunal has jurisdiction to decide, and the Applicant was so advised in the hearing.
- [5] Not all the evidence and submissions provided to me were directly related to the issues I must decide. So, while I have reviewed all the submissions and evidence provided, I refer only to that which is relevant to the issues to be decided. For the reasons set out below, after careful consideration of the evidence and submissions, I dismiss the application, without costs.

## **B. EVIDENCE & ANALYSIS**

**Issue: Does the use of the exit door near the Applicant's unit create an unreasonable noise that is a nuisance, annoyance or disruption contrary to s. 117 (2) of the Act?**

- [6] Section 117 (2) of the Act states:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation;

For the issues of this case to be captured by this section of the Act, there must be an activity, either carried on or permitted to be carried on, that results in the

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<sup>1</sup> For example, in *Reany v. Waterloo Standard Condominium Corporation No. 670*, 2023 ONCAT 163 (CanLII)

creation of, or continuation of, unreasonable noise that is a nuisance, annoyance or disruption.

- [7] A review of the relevant evidence provides the context for the issues to be addressed.
- [8] As noted above, the problematic door (the “exit door”) is almost directly opposite the entrance to the Applicant’s unit. The exit door provides access to the stairs to the upper floors and to the outside. The Applicant stated that the exit door is used frequently by the residents of the 15 units on her floor, largely for convenience, rather than making their way to the lobby of the building and the main exit. She stated that the exit door “only became noisy” long after she moved in (March 2021). Her first complaint to TSCC 1511 about the door was in December 2023. She submits that the 2 ½ year gap indicates to her that the problem either developed gradually due to wear and overuse or was caused by modifications made to the door components by contractors, the latter of which seems more likely in her view.
- [9] In her December 2023 complaint, the Applicant stated that people were using the exit door at 2 and 4 am, and when the door is opened with the push bar and then closes behind them, it makes a loud noise, waking her up. She asked TSCC 1511 to apply soft door closers and to notify residents not to use the exit door unless it was an emergency. TSCC 1511 did adjust the closing mechanism to have the exit door automatically close “softer”; however, this caused it not to latch properly and because it is a fire exit, it must fully latch closed as per the Fire Code. Further adjustments were made to the closing mechanism so that it could close ‘softer’ and still latch properly. Weather stripping was also applied to the exit door in an attempt to have it close more gently but again the latch became an issue.
- [10] On March 27, 2024, the Applicant sent another complaint to TSCC 1511. She acknowledged that the door closer sounded quieter, but the handle/opener was still “way too loud”. On April 28, the Applicant wrote to TSCC 1511 stating that the noise was still disturbing her. In early May the push bar assembly on the exit door was replaced, but the Applicant advised TSCC 1511 that it was not quiet at all. In addition, at some point in May, TSCC 1511 placed a sign on both sides of the exit door which stated, “Please close this door slowly behind you”. The Applicant states that this has been ineffective (and the sign in some photos submitted in evidence was not always affixed to the exit door) as some residents are unable to comply and some may be distracted or simply indifferent to the impact.
- [11] In July 2024, TSCC 1511 replaced the push bar assembly with a lever handle which had been suggested by the Applicant in May. However, the Applicant states

that this still has not improved the situation. I note that she is not alleging that the residents are using the door improperly; for example, they are not holding it open and slamming it shut or damaging the door handle when they use it causing a louder sound; rather they are simply using it too often in her view. The exit door is being used for its intended purpose, but perhaps more frequently than the Applicant anticipated though I note that there is no evidence to suggest that the exit door was being used by residents more in December 2023 than they had been in the two previous years.

- [12] As stated at the beginning of this decision, TSCC 1511, in its submissions, questioned whether the Tribunal has jurisdiction to hear the case, submitting that on the facts of this case there is no “activity” as required by s. 117 (2) of the Act<sup>2</sup> because the residents who are using the exit door are using it for its intended purpose – as a means of egress. TSCC 1511 submits that the Applicant’s complaints relate to the door being installed or modified in a deficient way. Based on some of the Applicant’s evidence, and in particular that of the contractor she consulted, referred to later in this decision, that argument is somewhat persuasive; however, in this case, in fairness to the Applicant who has presented a substantial amount of evidence about ‘noise’ I have decided to consider and decide that issue.
- [13] Three residents on the same hallway provided statements. One witness lives next door to the Applicant; another lives 75-80 feet down the hall and the third resides with the Applicant. The next-door neighbour described it as a loud jarring noise when the door slams shut, especially disruptive during quiet times of the night.
- [14] Both parties submitted videos, with sound, of the exit door closing. It does make a loud noise when closing, not unexpectedly given the type of door. The question is whether it is unreasonable. Two of the videos are taken from inside the stairwell area and not from the hallway. The sound of the door closing seemed to be amplified in that space and is likely not indicative of sound heard in the hallway where, for example, there is carpet on the floor and the walls are fully drywalled. None of the videos depict the situation where an individual is using the exit door as they would in the normal course. Instead, the videos show a person throwing the door open wide and allowing it to close.
- [15] The most instructive video, and the one to which I give the most weight, is one submitted by the Applicant from inside her unit. This video dated January 10, 2025, best captures what the Applicant likely experiences. The video starts with

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<sup>2</sup> TSCC 1511 has referred to several cases on this point; for example, *Sieviewright v. Toronto Standard Condominium Corporation No. 1793 et al.*, 2023 ONCAT 68 (CanLII)

both her door and the exit door open. Her door is then closed shut. The Applicant is recording decibel levels, standing, it appears, right inside her door. When closing her door, the decibel reading is, at its peak, 64.7 dB. The video then records the exit door closing and the peak decibel reading is 63 dB. While I note that these recordings were not made by an acoustical engineer (nor is there a requirement in Tribunal cases that one be retained), the evidence does show that the sound of the exit door closing when inside the Applicant's unit is in fact no louder than the sound of her own door closing, about which she does not complain. Furthermore, she is standing at her door; presumably when she is inside her unit in her living area or bedroom the level of sound is lower as she is further from the doorway.

[16] While I agree with the Applicant that it is not quiet – one can hear the exit door close, that does not mean the noise heard is objectively unreasonable which is the test that must be met. What is heard on the video is a level of sound that is to be expected in the circumstances – residents using an exit door in the ordinary course of communal living, and at a level of sound no greater than her unit door causes. She and her neighbours have described it as bothersome which it may well be. It may be subjectively annoying, and she may well have become sensitized to its sound. The Applicant's unit is closest to the exit door; some level of sound caused by its use is inevitable and ought to have been expected. The location of a unit as noted in *Park v Toronto Standard Condominium Corporation No. 2775*<sup>3</sup> ("Park") does not mean that the corporation is exempt from investigating a complaint or that an applicant is required to live with unreasonable noise, but I do not find that the noise is unreasonable based on the evidence before me.

[17] Having found that the noise is not unreasonable on the facts of this case, I need go no further in the analysis of whether it is a nuisance, annoyance or disruption.

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<sup>3</sup> 2023 ONCAT 171 (CanLII)

**Issue: Has TSCC 1511 fulfilled its obligations under the Act in relation to the Applicant's complaints?**

- [18] For completeness and because of the Applicant's focus on this issue, I will address it. In closing submissions, the Applicant stated that TSCC 1511 has been unwilling to address her issues with the exit door. However, the evidence as a whole, as set out above, indicates otherwise. TSCC 1511 took action to address the Applicant's complaints, though the Applicant does take issue with the speed with which TSCC 1511 acted and the competence of their contractors. The parties do agree that the exit door is required to meet specific Fire Code standards. To the extent that the exit door may not, for example, latch properly as the Applicant suggests is depicted in one of her videos, I note that any Fire Code non-compliance is not an issue for the Tribunal to decide; those are issues for the Toronto Fire Service to address. Likewise, when the Applicant submits that the exit door does not meet the standards required under the *Accessibility for Ontarians with Disabilities Act* and therefore may pose a safety hazard, any such issues must be pursued elsewhere.
- [19] I do not accept the evidence provided by one of the Applicant's neighbours that "the corporation has not done enough to address this simple ask from us despite multiple requests and the severity of the issue". It has not been a "simple ask"; the Applicant requested different fixes between December 2023 and June 2024 and TSCC 1511 responded as it was able given the Fire Code compliance concerns. Though the exit door may be used more often than anticipated, unlike an entrance door to a condominium's gym (as in the Park case for example), it cannot be locked during evening hours, because it is a fire exit.
- [20] The Applicant has at various points in her submissions, alleged that the exit door became noisy due to wear and overuse, that TSCC 1511 failed to properly oversee the work of its contractors whose modifications to the door may have caused the issue. She stated that the contractor to whom she sent photos and/or videos of the exit door has indicated that there is an inexpensive "fix" to the various issues which he believes cause the noise; specifically, the location and installation of some of the door's hardware. I note that there is no evidence that the exit door is broken in any way. Whether or not the Applicant's contractor is qualified to express such an opinion, submissions that TSCC 1511 is not maintaining the common elements properly (as referenced in paragraph 8 above) suggest issues arising under s. 90 of the Act which are not within the Tribunal's jurisdiction and must be pursued in another venue.

**Issue: Is either party entitled to costs?**

[21] The Applicant has been unsuccessful and therefore I make no award for costs in her favour.

[22] TSCC 1511 is seeking an order for costs on a partial indemnity basis of \$5490.56

[23] The cost-related rule of the Tribunal's Rules of Practice relevant to this request is:

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[24] The Tribunal's "Practice Direction: Approach to Ordering Costs" provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties; whether a party has failed to follow or comply with a previous order or direction of the Tribunal.

[25] TSCC 1511 submits that the Applicant was made aware that the relief she was seeking was not possible because of the requirement to comply with the Fire Code and therefore she was being unreasonable in pursuing the case. While the Applicant has been persistent since December 2023 in her efforts to have TSCC 1511 provide her the relief which she believes is required, I cannot conclude that she has been unreasonable. I say this in large measure because, while I have in this decision referred to a couple of the Tribunal decisions cited by the Applicant, it is clear from her submissions that she reviewed many Tribunal decisions and based on that review believed that her position was valid. She was entitled to pursue a case before the Tribunal. Litigants frequently find themselves on the losing side when a court or tribunal decides questions of law. That does not, in and of itself, mean that pursuing a case was unreasonable.

[26] TSCC 1511 also submits that the legal costs incurred in relation to this application should be borne by the Applicant and not subsidized by other owners. In some cases, the Tribunal has agreed with that argument. However, on the facts before me, and exercising my discretion, I do not. Several of the Applicant's neighbours supported her in this case. Many of the neighbours are, for convenience, using the exit door regularly and apparently are indifferent to any impact on other

neighbours. They have to some extent contributed to the situation which has given rise to this dispute.

[27] Furthermore, as the Tribunal has noted in other cases, incurring legal costs is often a consequence of the business of the condominium corporation. It is worth noting too, in a case such as this, what the extent of that subsidization is. At the full indemnity amount, counsel's bill of costs is \$8235.44. TSCC 1511 is comprised of 431 units (based on the CAO's condominium registry), so a calculation based on each unit paying an equal share is approximately \$19.

[28] Based on the considerations set out above, I am exercising my discretion and make no award of costs against the Applicant.

**C. ORDER**

[29] The Tribunal orders that the application be dismissed without costs.

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Patricia McQuaid  
Vice-Chair, Condominium Authority Tribunal

Released on: March 18, 2025